

David Barker

600 West Broadway, Suite 1800
San Diego, California 92101-3375

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

Tel: +1.619.236.1234 Fax: +1.619.696.7419

www.lw.com
FIRM / AFFILIATE OFFICES

| | |
|-------------|-------------------|
| Barcelona | New Jersey |
| Brussels | New York |
| Chicago | Northern Virginia |
| Frankfurt | Orange County |
| Hamburg | Paris |
| Hong Kong | San Diego |
| London | San Francisco |
| Los Angeles | Shanghai |
| Madrid | Silicon Valley |
| Milan | Singapore |
| Moscow | Tokyo |
| Munich | Washington, D.C. |

2008 APR -7 P 1:55

LATHAM & WATKINS LLP

April 4, 2008

San Diego Regional Water Quality Control Board
Attn: John Robertus, Executive Officer
9174 Sky Park Court
Suite 100
San Diego, CA 92123

File No. 030815-0011

Re: Shipyard Sediment Site 2005 Tentative Cleanup and Abatement
Order No. R9-2005-0126

Dear Mr. Robertus:

On behalf of General Dynamics NASSCO, we received the San Diego Regional Water Quality Control Board Cleanup Team's proposed format for submission of comments into the administrative record for the shipyard sediment matter. We appreciate Board Staff's early distribution of the proposed format and the opportunity to comment. However, we believe that a less burdensome format for comments is appropriate, as further described herein. The format for written comments, as well as various other procedural issues for the upcoming phases of the proceedings, can best be addressed in an administrative case management conference. Therefore, we respectfully request that the Presiding Officer schedule a conference with the designated parties at the earliest possible time to address the issues described below.

Format for Comments

The Site Cleanup Team has recommended an overly-burdensome format for submission of written comments, whereby each comment must be preceded by a separate "information table" and cannot be combined with other comments referring to the same document. Moreover, the Site Cleanup Team recommends the draconian penalty of having comments stricken from the record if they do not conform.

The complex technical documents at issue here will necessarily generate submissions that cannot be simplified into individual comments separated by a table referencing a single issue and single document, which would be required by the Site Cleanup Team's proposed format. Nor is this unduly cumbersome procedure contemplated by the First Amended Order of Proceedings, which merely requires that comments be formatted in a "sequential structure that is organized by subject matter to facilitate the review of submitted comments and the development of responses

LATHAM & WATKINS LLP

to comments.”¹ Comments with headings describing issues addressed would meet the requirements of the First Amended Order of Proceeding without adding unnecessary complexity and paperwork to an already voluminous record. Because the parties will be required to provide all documents in text-searchable Adobe PDF file format with an electronic index, review of, and response to, submitted comments will be facilitated by the addition of these headings within the submitted comments.

Revision of the Order of Proceedings

As you know, we have not yet received the administrative record in this matter, and do not know the format or “usability” of the scanned record and index. However, previous correspondence from the Cleanup Team suggests that the size of the record may exceed 130 linear feet of documents. Once the voluminous administrative record is released, the parties will require sufficient time to review and digest the materials before initiating discovery. In recognition of the enormous volume of documents in the administrative record, former Presiding Officer, Chairman John Minan, did not make the time periods for discovery in the First Amended Order of Proceedings final, and explicitly noted that the schedule and process would be revisited in pre-hearing conferences after the distribution of the Technical Report and data by the Site Cleanup Team.² Indeed, at the Second Pre-Hearing Conference, Mr. Minan anticipated that the *forty* linear feet of documents in the record “obviously is going to require significant adjustment of time.”³

Request for Pre-Hearing Conference

We request, on behalf of General Dynamics NASSCO and pursuant to the amended order of proceedings, that, upon issuance of the administrative record, a case management conference be held at the parties’ earliest convenience to determine an appropriate timeframe for conducting and completing Phase III of the order of proceedings. The order of proceedings currently authorizes only 90 days for (i) the review of the technical report and supporting materials, (ii) the completion of any related discovery, and (iii) the submission of evidence and comments. Given the massive volume of the record, the 90-day period associated with Phase III likely is not sufficient time to review the administrative record, let alone coordinate and complete discovery, and submit additional evidence.

The issuance of the record also triggers a 30-day period for the designated parties to submit to the Board a summary of disagreements with the facts and law in this matter. Because it is unlikely that the record can even be reviewed in 30 days after its issuance, the format and

¹ First Amended Order of Proceeding (January 30, 2006) at 6.

² *Id.* at 1 (stating that Paragraphs 1,2 and 4-14 were final, thereby confirming that Paragraph 3, which outlined the schedule and phases of the process, is not final) and 4 (“The schedule and process may be revisited by the Presiding Officer in a subsequent Pre-hearing Conference after the Technical Report information in Phase II is distributed by the Cleanup Team or whenever the Presiding Officer deems appropriate.”).

³ Pre-Hearing Conference Tr. At 63:7 (December 6, 2005).

LATHAM & WATKINS^{LLP}

timing of the disputed issues list should also be discussed and revised at a pre-hearing conference.

Conclusion

A pre-hearing conference would be the most appropriate forum for determining the revised order of proceedings, a reasonable format for submission of comments, and other procedural issues triggered by the commencement of Phase III. Therefore, NASSCO respectfully requests that a case management conference be held at the earliest possible time.

Sincerely,



Kelly E. Richardson
of LATHAM & WATKINS LLP

cc: David Barker, Regional Water Quality Control Board
Vice-Chair David King, Regional Water Quality Control Board
Regional Water Quality Control Board Members
Christopher Barnes, Esq., General Dynamics NASSCO
See Attached E-Mail Service List